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Letter dated 20 December 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 19 October 2004 (S/2004/851). The Counter-Terrorism Committee has received the attached fourth report from Belgium submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its attachment to be circulated as a document of the Security Council.

(*Signed*) Andrey I. **Denisov**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 17 December 2004 from the Permanent Representative of Belgium to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

[Original: French]

I have the honour to transmit herewith the fourth report of Belgium to the Counter-Terrorism Committee (see enclosure). The report provides answers to the questions posed by the Committee in your letter of 20 September 2004.

(*Signed*) Johan C. **Verbeke**
Ambassador
Permanent Representative of Belgium to the United Nations

Enclosure*

[Original: French]

Fourth report of Belgium to the Counter-Terrorism Committee

1. Implementation measures

Effectiveness in the protection of financial systems

1.1 Structure, resources and staffing of the Belgian Financial Intelligence Processing Unit (BFIPU)

Structure of BFIPU

With regard to the structure of the Belgian Financial Intelligence Processing Unit (BFIPU), it is important to distinguish between the members of BFIPU, who have decision-making powers, and the secretariat staff, who provide technical assistance. The composition, organization and functions of BFIPU are governed by the royal order of 11 June 1993.[1]

BFIPU members

BFIPU is composed of financial experts and a senior officer of the federal police, and is headed by a judge assigned from the prosecution service, or his deputy. During the preparatory work for BFIPU, the Minister of Justice expressed a preference for a judge from the prosecution service on the grounds that, once an effective money-laundering index was established, BFIPU should be able to communicate the relevant information to the prosecution service without delay. The members of BFIPU, who comprise a minimum of three and a maximum of eight experts, are appointed by the King, on the proposal of the Ministers of Finance, Justice and Economic Affairs, for a renewable six-month term. Half the members are subject to renewal every three years. The vice-chairman and the one or two judges serving as deputy chairmen are appointed from among the members. The appointment of members is governed by very strict requirements. In particular, they must have at least 10 years' experience in a judicial, administrative or scientific post relating to the activities of individuals and entities to which the law applies. They may not hold any elective public position or carry out any employment or public or private activities that could compromise the independence or dignity of their position. They may not simultaneously hold, or have held during the year prior to their appointment, a position as an administrator, director, manager or officer of a financial institution, real-estate firm, money transportation firm or casino. They are bound by strict professional confidentiality.

The internal rules of procedure of BFIPU provide that the chairman is responsible for overseeing the preparation and review of cases submitted to BFIPU, the drafting of minutes of its meetings and the implementation of its decisions. He

* Annexes are on file with the secretariat and are available for consultation.

[1] Royal order of 11 June 1993 concerning the composition, organization, functions and autonomy of the Belgian Financial Intelligence Processing Unit, published in the *Moniteur belge* of 22 June 1993, p. 15,118. This order has been amended on several occasions, notably through the amendments made to the law of 11 January 1993. It was amended by the royal orders of 30 May 1994, 23 February 1995, 4 February 1999, 28 December 1999 and 20 July 2000.

also handles general external relations, convenes meetings as required by the mandate of BFIPU, and represents it in all its judicial and extrajudicial proceedings.

The chairman and vice-chairman make up the bureau. If the chairman is unable to attend, he is replaced by one of the deputy chairmen. If the vice-chairman is unable to attend, he is replaced by another member. The internal rules of procedure of BFIPU define the bureau's mandate. The bureau is responsible for organizing the work of BFIPU and for its day-to-day administration; it oversees the preparation of the budget, as well as the annual operating report. It hires secretariat staff under contract and sets their salary levels, directs them and organizes their work. It takes decisions on the secondment of staff to BFIPU.

The royal order of 11 June 1993 stipulates that the Ministers of Justice and Finance are responsible for setting the salary levels of the members of BFIPU.

BFIPU secretariat

In accordance with article 7 of the royal order of 11 June 1993, BFIPU is assisted by a secretariat composed of administrative staff, as well as staff who are responsible for assisting the financial experts. The secretariat has grown somewhat over the past 10 years, as a result of the continuous increase in the tasks of BFIPU. It currently comprises two secretaries; a head of administration; a head of documentation; 10 information assistants; three legal advisers; one criminologist; a team of 12 inspectors, analysts, economists and lawyers; and a head of investigations and human resources who coordinates the investigations with the assistance of two chief inspectors. It is the inspectors who are responsible for analysing financial information gathered by BFIPU. The information assistants maintain the databases and assist the inspectors.

Staff of the secretariat are bound by the same strict professional confidentiality as the members of BFIPU. They are also subject to incompatibility rules and, under article 7 of the royal order of 11 June 1993, may not perform any duties for, or be employed by the financial entities or professions to which the law of 11 January 1993 applies. BFIPU establishes the ethical standards to be followed by its staff.

BFIPU has also engaged the services of three full-time liaison officers, seconded from the police, who are mainly responsible for relaying information between the police and BFIPU. A customs officer is also seconded on a part-time basis. In accordance with article 9 of the royal order of 11 June 1993, these officials must give a written undertaking to maintain professional confidentiality.

BFIPU may also call upon the services of external experts, and they too are bound by professional confidentiality.

Budget of BFIPU

Because of its legal status, BFIPU establishes and manages its own budget, although the Ministers of Justice and Finance determine a maximum budget level. Laws concerning the budgetary authority of the State do not, therefore, apply to BFIPU.

When BFIPU was established, the ministerial decree of 17 June 1993 fixed its maximum budget level at 35 million Belgian francs. The maximum level has risen

to €2 million because the workload of BFIPU has increased substantially since its inception, primarily because of the expansion of its preventive functions.

The budget of BFIPU is not paid by the State, and consists instead of annual contributions paid by the entities and professions to which the law applies.

Article 11, paragraph 7 of the law of 11 January 1993 provides that the King sets the level of contributions to the operating costs of BFIPU payable by the institutions and entities concerned. Article 12 of the royal order of 11 June 1993 provides for two categories of contribution: one fixed, and the other variable. All the entities and professions to which the law applies are required to pay a fixed contribution in an amount dependent upon their size and the number and nature of the reports they are required to make to BFIPU. Furthermore, each financial institution to which the law applies — with the exception of the National Bank of Belgium, the Post Office, the Savings Bank, consumer credit companies, institutions that issue or manage credit cards and mortgage-lending institutions — is required to pay a variable contribution which is prorated against its share of the overall contribution to operating expenses that was paid to the respective supervisory authorities in the previous year.

Under article 12, paragraph 5 of the royal order of 11 June 1993, BFIPU may authorize the value added tax, registration and State property department to collect outstanding contributions.

Technical resources of BFIPU

BFIPU is equipped with the necessary technical resources to deal effectively with suspicious transaction reports and associated information. Its database was developed internally and designed to meet the operational requirements of its prevention functions. Since 2003 BFIPU has used the MySQL programme. There are also plans to automate the transmission of suspicious transaction reports using a mandatory form. Initially this means of communication would apply solely to financial institutions.

With respect to the exchange of information with the Financial Intelligence Units (FIUs) of other countries, BFIPU uses two secure communication methods: Egmont Secure Web, which was developed by the Egmont Group and is used by nearly all the 94 FIUs that are members of the Group, and FIU.NET, which is currently being used by a number of FIUs of European Union countries. The European Commission actively supports the development of FIU.NET.

1.2 Procedures used to designate terrorist organizations

Belgium does not maintain a national list of terrorist organizations. Assets freezing procedures are therefore applied only against individuals or entities appearing on the lists of the United Nations Security Council or the European Union.

Belgium contributes to the formulation of the European Union lists through the European Union clearing house. Its contributions are made following consultations among the Federal Department of Foreign Affairs, the Federal Department of the Interior, the Federal Department of Justice, the State Security Department, the Federal Prosecution Service and the Federal Police.

With regard to the State Security Department in particular, the organic law of 30 November 1998 on the intelligence and security services defines terrorism as the use of violence against persons or property for ideological or political motives in order to achieve one's goals through terror, intimidation or threats (art. 8, part 1, para. 2 (b)).

1.3 Measures relating to the transfer of funds

I Measures relating to wire payments and transfers, aimed at combating the financing of terrorism

(a) Client identification

According to article 4, paragraph 1 of the law of 11 January 1993 (as amended by the law of 12 January 2004) on preventing the use of the financial system for the purposes of money-laundering and the financing of terrorism, before a wire transfer or payment is made, the institution concerned must first completely and correctly identify the client in question, verify his identity by means of a duly certified document, and make a copy of the document.

Under amended article 21 bis of the law of 11 January 1993, the supervisory authorities — including, with respect to institutions such as credit companies and foreign exchange bureaux, the Banking, Finance and Insurance Commission (BFIC) — are required to inform the institutions under their control, by means of regulations if necessary, of how they should discharge their legal obligations under section II of the law, including obligations regarding client identification.

On 27 July 2004 BFIC adopted its regulations in application of article 21 bis of the law. The regulations were approved by a royal order of 8 October 2004. The royal order and the BFIC regulations were published in the *Moniteur belge* of 22 November 2004. The regulations set out detailed rules for the identification of clients by the institutions concerned.

BFIC also supplemented its regulations with a circular of 22 November 2004 on client due diligence requirements and on preventing the use of the financial system for the purposes of money-laundering and the financing of terrorism. The circular provides a commentary on the applicable laws and regulations and makes recommendations for their effective implementation.

The BFIC regulations and circular may be consulted on its web site: http://www.cbfa.be

(b) Policies regarding client acceptance

Within the framework of the aforementioned regulations and circular, BFIC has also strengthened its requirements regarding client identification through the requirement that each institution should design and implement an adequate client acceptance policy, which may be used not only to help build business relationships with clients, but also in cases where an occasional client wishes to make an isolated transaction (including a wire transfer).

Without going into every detail on this point, it may be noted that paragraph 7.1 of the BFIC circular sets forth the general principles underlying the client acceptance policy. Paragraph 7.1.2 is of particular significance; it provides that the client acceptance policy should also enable each institution to ensure that it is meeting its financial embargo obligations in accordance with the royal orders and ministerial decrees adopted pursuant to the decree-law of 6 October 1944 on the control of all transfers of assets and securities between Belgium and other countries,[2] the law of 11 May 1995 on the implementation of the decisions of the United Nations Security Council,[3] and the law of 13 May 2003 on the implementation of the restrictive measures adopted by the Council of the European Union against States, certain persons and entities.[4] This requires in particular that steps are taken to verify that neither the client, nor his representatives, if any, nor his economic beneficiaries are persons who are included in the applicable embargo lists.

(c) Immediate transfer of information on the originator of wire transfers

Amended article 4, paragraph 5 of the law of 11 January 1993 provides that any institutions stipulated in article 2 whose activities include wire transfers within the meaning of article 139 bis of the law of 6 April 1995 on the status and oversight of investment companies, securities brokers and advisers, must ensure that wire payments and transfers, as well as related communications, are accompanied by precise and relevant information concerning their originators. These institutions must retain all such information and forward it when acting as intermediaries in a sequence of payments.

In view of the work under way at the European level to draft a European regulation — which would be directly applicable in member States — to set out the modalities for the implementation of Special Recommendation VII of the Financial Action Task Force on Money Laundering (FATF), BFIC has decided not to include similar provisions at the current stage in its regulations adopted pursuant to article 21 bis of the law of 11 January 1993. However, it did devote chapter 10 of its aforementioned circular to specific requirements regarding wire transfers. This chapter is directly based on Special Recommendation VII of FATF and its interpretative note.

(d) Specific requirements for vigilance by institutions regarding wire payments and transfers

The law (art. 2, para. 2 and art. 8), the BFIC regulations (arts. 35 to 37), and the BFIC circular (chap. 9) also set out the requirements for vigilance by the institutions concerned with regard to their clients and their business transactions and relations.

Briefly, in addition to the "first-tier" vigilance exercised by officials directly involved with clients and transactions, the new provisions require that the institutions concerned implement a "second-tier" monitoring system. This system, which would ideally be automated, should enable such institutions to identify

[2] *Moniteur belge*, 7 October 1944; amended by the law of 28 February 2002 on the establishment of Belgium's balance of payments and global foreign positions and amending the decree-law of 6 October 1944 on the control of foreign exchange transactions and various legal provisions, *Moniteur belge*, 3 May 2002, 2nd edn., p. 18,700.

[3] *Moniteur belge*, 29 July 1995, p. 20,444.

[4] *Moniteur belge*, 13 June 2004, p. 31,923 and errata *Moniteur belge*, 20 June 2003, p. 33,191.

unusual transactions which need to be analysed to ensure that they are not linked to money-laundering or the financing of terrorism, and thus to inform BFIPU more efficiently of any transactions that do appear suspicious.

These provisions apply equally to wire transfers and payments, whether made by clients or initiated by clients themselves. This two-tier monitoring mechanism should make it possible to identify, and communicate to BFIPU, any transfers or payments made to or by an individual whose name is included in a financial embargo list. Furthermore, article 38 of the aforementioned BFIC regulations provides, in its final paragraph, that an unusual transaction within the meaning of this article is a wire payment or transfer received by a client concerning which the precise and relevant information concerning the originator envisaged in article 4, paragraph 5 of this law is missing. Such transactions also have to be analysed by the official responsible for the prevention of money-laundering and the financing of terrorism and, if necessary, communicated to BFIPU.

II. Monitoring methods — penalties

BFIC is also the regulatory authority responsible for monitoring entities under its jurisdiction to ensure that they comply with their legal and regulatory obligations relating to the prevention of money-laundering and the financing of terrorism, and are properly organized and have sufficient internal controls in that regard. In this context, BFIC also verifies whether entities duly report such suspicious transactions as they detect to BFIPU. BFIC carries out these controls on the basis of legal provisions which determine its routine monitoring powers with regard to companies under its jurisdiction.

Against this backdrop, BFIC can in particular carry out remote monitoring relating to the prevention of money-laundering and the financing of terrorism on the basis of the annual activity reports of the officials responsible for the prevention of money-laundering and the financing of terrorism within each entity, a copy of which must be sent to BFIC.

In addition, BFIC carries out "on-site" monitoring to ensure that entities comply with legal and regulatory obligations, are properly organized at the administrative level and have sufficient internal controls vis-à-vis the prevention of money-laundering and the financing of terrorism. It does this by seeking assistance from external auditors, on the one hand, and conducting on-site inspections itself, on the other.

Where the latter are concerned, checks are carried out either during inspection visits relating specifically to the prevention of money-laundering and the financing of terrorism or during inspection visits relating to other activities or functions of the establishment in question, but which also include an investigation of the prevention of money-laundering and the financing of terrorism in the context of the activity or function being inspected. Reports including the observations and recommendations arising from the inspections are sent to the management of the establishment concerned. Implementation of these recommendations is monitored either with the assistance of external auditors or through follow-up inspections.

Should serious shortcomings be observed, article 22 of the law of 11 January 1993 provides for penalties (administrative fine).

Effectiveness of counter-terrorism

1.4. Prosecutions

No one has been prosecuted for the financing of terrorist activities since the adoption of Security Council resolution 1373 (2001).

With regard to terrorist activities and the provision of support to terrorists or terrorist organizations, a distinction must be made between cases concerning which a judicial decision has already been taken and cases which are still in the investigation stage.

– *Cases concerning which a judicial decision has already been taken*: There are four cases concerning which judicial decisions have been taken since 28 September 2001. None of these procedures were based on the law of 19 December 2003 relating to terrorist offences, which has been in force since 1 January 2004. The individuals charged in connection with these cases were therefore convicted on charges of criminal offences under ordinary law but for acts committed in the context of terrorism:

• number of people convicted on charges of terrorist activities: 9

• number of people convicted on charges of providing support to terrorists or terrorist organizations: 18.

– *Cases which are still in the investigation stage*: Two cases are currently in the investigation stage, in connection with which 13 people have been charged, as follows:

• number of people charged with terrorist activities: 8

• number of people charged with providing support to terrorists or terrorist organizations: 5.

These two cases are being investigated under the law of 19 December 2003 relating to terrorist offences.

1.5. Becoming a party to conventions relating to terrorism

Belgium acceded to the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, on 19 May 2004.

The International Convention for the Suppression of Terrorist Bombings is in the process of being ratified: the Belgian Council of Ministers of 19 November 2004 approved the ratification documents; once the Council of State has issued its opinion (expected by the end of December 2004), the bill of Parliamentary assent will be presented to Parliament.

The Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its Protocol have been brought into line with the opinion of the Council of State and presented to Parliament: both instruments could still be ratified by the end of 2004 or early in 2005.

Only one instrument remains pending: the Convention on the Marking of Plastic Explosives for the Purpose of Detection. Since this has been declared a

mixed treaty, it must also be ratified by the regional Parliaments. At the federal level, the Federal Transport Department is responsible for the dossier.

1.6. Cooperation and information sharing among the various government agencies, including their foreign counterparts, which may be involved in investigating the financing of terrorism

BFIPU prepares its cases on the basis of suspicious transaction reports received from institutions and individuals subject to the law of 11 January 1993 on preventing the use of the financial system for money-laundering and the financing of terrorism. According to article 15, paragraph 1 of this law, BFIPU may request such additional information as it deems useful to fulfilling its mandate, within a deadline of its own choosing, from the entities listed below:

(i) All the entities and individuals mentioned in articles 2, 2 bis and 2 ter (respectively, the financial sector in the broad sense of the word, a number of non-financial professions and, in certain specific cases, lawyers), as well as the president of the Bar mentioned in article 14 bis, paragraph 3. This applies not only to the main declarant of the case, but to *all reporting individuals and entities*;

(ii) The *police services*, notwithstanding article 44/1 of the law of 5 August 1992 on the role of the police as amended by the law of 26 April 2002 on the essential elements of the status of members of the police services and establishing various other provisions relating to the police services. This provision applies to both the federal police and the local police;

(iii) The *administrative services of the State*, such as the fiscal authorities, the Department of Customs and Excise, the State Security Service and the General Intelligence and Security Services of the Belgian Armed Forces, the National Office for Social Security, the Alien's Office, etc.;

(iv) *Official receivers*;

(v) *Provisional administrators*, mentioned in article 8 of the law of 8 August 1997 on bankruptcy; and

(vi) *Judicial authorities*. However, an examining magistrate may not transmit information to BFIPU without the express authorization of the public prosecutor or federal prosecutor and BFIPU may not transmit information obtained from a judicial authority to a foreign entity, in application of article 17, paragraph 2 of the law of 11 January 1993, without the express authorization of the public prosecutor or federal prosecutor.

To facilitate the gathering of additional information, three federal police liaison officers have been seconded to BFIPU on a full-time basis, as well as one Customs Department liaison officer on a part-time basis. A similar mechanism for closer cooperation with the State Security Service is currently being developed. It should also be noted that the law of 17 January 2003 amending the law of 11 December 1998 on security clearances and classification exempts BFIPU from having the necessary security clearance to access such information, as was already the case for judicial authorities.

In addition, under article 21 of the law of 11 January 1993, the *oversight or supervisory authorities or disciplinary authorities* of reporting entities and

individuals who observe facts that could constitute evidence of money-laundering are obliged to inform BFIPU. This reporting obligation relates to facts observed by the authorities concerned either during their inspections or in the context of their legal and regulatory role.

BFIPU is bound by strict professional confidentiality. This is why information always circulates in one direction only, from the entities and individuals concerned and the police and administrative services to BFIPU, and not in the opposite direction.

There are a number of exceptions to the confidentiality obligation, in addition to that concerning the transmission of information to the prosecution service should an analysis by BFIPU reveal serious indications of money-laundering or financing of terrorism. Thus, BFIPU may communicate such information to its *foreign counterparts* on the basis of reciprocity and provided that the latter do not use the information for investigative purposes or transmit it to third parties without the prior consent of BFIPU, and that the counterpart concerned is subjected to the same confidentiality obligations as BFIPU. BFIPU is a founding member of the Egmont Group and collaborates regularly with 63 financial intelligence units.

Requests for information from foreign counterparts are considered in the same way as suspicious transaction reports, in accordance with article 11, paragraph 2 of the law of 11 January 1993. This means that, in order to process such reports, BFIPU may request such information as it deems useful in accordance with article 15 of the law (see above). As explained above, this information is exchanged through the Egmont Secure Web (ESW) or the FIU.NET web site.

Moreover, BFIPU may transmit useful information to the *oversight, supervisory or disciplinary authorities* of entities and professions subject to the law so that those authorities may, if necessary, impose penalties for non-compliance with the provisions of this law. BFIPU has made use of this right on several occasions, particularly regarding shortcomings in client identification and suspicious transaction reports. It may also inform these authorities when a case connected with the laundering of money derived from an offence which the authorities are competent to investigate is transmitted to the prosecution service. Thus, for example, BFIC may ask BFIPU to transmit any information on cases connected with the offence of insider trading.

In addition, like the mechanism for notifying the Minister of Finance, whenever BFIPU transmits a case connected with serious organized fiscal fraud or a customs-related offence to the prosecution service (see above) concerning which the State Security Service or the General Intelligence and Security Services of the Armed Forces have provided information, it informs those services of the transmission.

The mechanisms described above are fully applicable in the context of combating the financing of terrorism, as BFIPU is the authority that is competent to receive reports of transactions suspected of being connected with the financing of terrorism from the institutions and individuals subject to the law of 11 January 1993. A distinction must be made between these reports and decisions relating to the freezing of assets taken on the basis of United Nations resolutions and European regulations. The latter, which generate a purely administrative procedure, must be addressed to the Treasury. Even though the two procedures are separate, BFIPU informs the Treasury and the Minister of Finance each time it transmits a case

containing the name of an entity or individual included in the United Nations lists to the prosecution service.

Moreover, BFIPU is in regular contact with other authorities responsible for processing cases connected with the financing of terrorism, such as the federal prosecution service, the federal police and the State Security Service.

According to statistical data gathered by BFIPU over the past four years, it has transmitted 64 cases connected with terrorism or the financing thereof to the judicial authorities. Of these, three cases resulted in a legal conviction in 2003. Twenty-two other cases were sent back to the correctional court. As at 1 October 2004, five cases connected with terrorism and transmitted by BFIPU were at the investigation stage and 19 were at the preliminary hearing stage. In addition, at the same date, one case connected with the financing of terrorism and transmitted by BFIPU was at the investigation stage and two other cases connected with the financing of terrorism and transmitted by BFIPU were at the preliminary hearing stage.

It should be emphasized that BFIPU justifies the transmission of cases to the prosecution services on the grounds of serious indications of financing of terrorism or of money-laundering connected with the serious offences mentioned in article 3, paragraph 2 of the law of 11 January 1993. BFIPU may also indicate one or more criminal activities from which the funds concerned may derive. However, the judicial authorities are not bound by the definition provided by BFIPU when the case is transmitted to the prosecution service. It is up to the latter to decide how it will follow up the information transmitted and, if necessary, the offence(s) for which action will be brought. This is why the statistical data drawn up by BFIPU differs from that drawn up by the judicial authorities (see section 1.4).

Within the European Union, a mechanism has been established for peer evaluation of national counter-terrorism mechanisms (Council decision of 28 November 2002). An initial area for evaluation is the exchange of information between the police and intelligence services, and other bodies dealing with the various aspects of terrorism, with a particular focus on extremist Islamic groups. Belgium was evaluated in September 2003 by experts from Italy, Portugal and the European Police Office (Europol). The evaluation report was approved by the Council in October 2004.

Effectiveness of customs, immigration and border controls

1.7. Border controls

Customs authorities do not carry out any border controls on cash or securities and no limit is therefore imposed. Other assets (precious metals and precious stones) come under normal customs controls (customs declaration and assets control). There are no limits, provided the assets concerned are not subject to an embargo. Special measures are applied to diamonds; however, authorization is required for all imports or exports of diamonds and for rough diamonds, a Kimberley certificate is required, but no other limits are imposed.

A European Union directive is nonetheless being drafted that would make customs declarations compulsory for sums exceeding €10,000. Once the directive is published, the States members of the European Union will have 18 months to transpose the directive into their domestic legislation. This directive concerns customs controls at the European Union's external borders.